

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

Case No. 21-49495

BRIAN JAMES ZIELKE,

Chapter 13

Debtor.

Judge Thomas J. Tucker

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**ORDER DENYING FEE APPLICATION WITHOUT PREJUDICE,  
AS PREMATURE**

This case is before the Court on a fee application filed by the former attorney for the Debtor on January 31, 2022, entitled “Application for Award of Pre-Confirmation Attorney Fees in Ch. 13 Proceeding over \$1,000.00” (Docket # 23, the “Fee Application”). On February 28, 2022, the applicant filed a Certification of Non-Response, indicating that no one had filed a timely objected to the Fee Application (Docket # 33).

The Court will deny the Fee Application, without prejudice as stated below, as premature. It is premature because no Chapter 13 plan has been confirmed yet. The case is currently scheduled for an adjourned confirmation hearing to be held on May 12, 2022. (*See Order at Docket # 26.*)

The Fee Application does not demonstrate good cause for the Court to allow fees for the Debtor’s counsel at this time, when no Chapter 13 plan has been confirmed yet. *See generally* 11 U.S.C. § 1326(a)(2). Even if the Court granted a fee application for the Debtor’s former counsel now, the Chapter 13 Trustee could not disburse any money to the Debtor’s former counsel from funds on hand at this time, under § 1326(a)(2). And the Debtor has not paid this attorney any retainer, according to the Fee Application.

Accordingly,

IT IS ORDERED that the Fee Application (Docket # 23) is denied.

IT IS FURTHER ORDERED that this Order is without prejudice to the right of the Debtor's former counsel to file a new fee application, after one of the following events has occurred in this case: (1) a plan has been confirmed; (2) the case has been converted to Chapter 7; or (3) the case has been dismissed.

**Signed on March 1, 2022**



/s/ **Thomas J. Tucker**

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**Thomas J. Tucker**  
**United States Bankruptcy Judge**